SUPREME COURT, U. S.

No. 173

OCT 1 1968

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968.

RICHARD E. GORMAN,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals
For The Seventh Circuit

SUPPLEMENTAL REPLY TO THE BRIEF OF THE UNITED STATES IN OPPOSITION

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It has lately been called to the attention of Petitioner's attorneys that on July 3, 1968, the Second Circuit, sitting *en banç*, held that the test for determining criminal responsibility as laid down by that Circuit in *United States* v. *Freeman*, 357 F. 2d 606, was reaffirmed and ruled that it should be applied retroactively. This *en banc* consideration was given in *United States* v. *Tarrago*, Docket No.

30416 of the United States Court of Appeals for the Second Circuit, September Term, 1967. To our knowledge, the case has not been reported, and, therefore, a copy of said decision is submitted in the Appendix hereto.

It is respectfully submitted that this case be given consideration together with the Petition for the Writ and Reply heretofore filed herein, as illustrative of the timeliness of the question and the confusion of the Circuit. Further, the *Tarrago* case represents a second time the Government has deemed the question of the application of the ALI standard of criminal responsibility sufficiently important to ask Courts of Appeals to sit on it *en banc*. See also the decision of the United States Court of Appeals for the Seventh Circuit, sitting *en banc* in *United States* v. *Shapiro*, 383 F. 2d 680.

Respectfully submitted,

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